
TAKE-OVERS BULLETIN

A periodic newsletter by the Secretariat of the Singapore Securities Industry Council for participants in take-overs and mergers

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Welcome Message

Welcome to the eighth issue of the SIC Secretariat's Take-overs Bulletin.

In this issue, we highlight the key findings from the hearing into Delong Holdings Limited for breaches of the Singapore Code on Take-over and Mergers (the "Code") and remind advisers of the critical role they play in ensuring that their clients comply with the Code. We also provide guidance on how the 1% creeper under Rule 14.1(b) of the Code is calculated.

Breach of Rule 17.1 of the Code

The SIC issued a public statement on 29 July 2019 following a hearing into breaches of the Code arising from the withdrawal of the voluntary cash offer (the "Offer") for Delong Holdings Limited (the "Offeree") announced by Best Grace Holdings Pte. Ltd. (the "Offeror") on 11 October 2018.

Rule 17.1 of the Code requires a voluntary offer to be in cash or accompanied by a cash alternative where the offeror and any person acting in concert with it has bought for cash, during the offer period and within 6 months prior to its commencement, shares of any class under offer in the offeree company carrying 10% or more of the voting rights of that class. The cash offer or cash alternative must be at not less than the highest price paid by the offeror or any person acting in concert with it for shares of the class during the offer period and within 6 months prior to its commencement.

The Offeror had purchased a 15.04% stake in the Offeree (the "Prior Purchase") more than 3 months prior but within 6 months of the commencement of the Offer. The Prior Purchase included a purchase made at the highest price paid by the Offeror in the 6 months prior to the Offer. Under Rule 17.1, this would have obliged the Offeror to offer at least the highest

price paid for the Prior Purchase. Instead, the Offeror announced the Offer at a lower price, in the mistaken belief that it was only obliged to offer the highest price it paid for shares in the last 3 months under Rule 15.3. As a result, Rule 17.1 was breached. The Offeror was given the opportunity to increase its Offer to comply with the Code, but was unable to do so. Eventually, the Offer was withdrawn.

The hearing committee appointed by the SIC to look into the matter found, amongst others, that the Offeror's legal and financial advisers had failed in their responsibilities as advisers to ensure that the Offeror complied with Rule 17.1 of the Code, falling short of the standards expected of advisers under the Code. Accordingly, the advisers were found to have breached the Code. The advisers had simply failed to recognise that the Prior Purchase by the Offeror had triggered the longer 6-month price reference period under Rule 17.1 for a voluntary offer. While their oversight was inadvertent, it was a serious lapse. It caused the Offeror to announce the Offer in breach of Rule 17.1 and, ultimately, resulted in the withdrawal of the Offer.

The case demonstrated the critical role that advisers played in ensuring that their clients comply with the Code. In advising their clients, advisers have to be vigilant and exercise due care at all times. Advisers must be conversant with the requirements of the Code, and how these requirements are applied in practice. This is fundamental and cannot be over-emphasized.

We would like to take this opportunity to remind all advisers that they should have proper processes and controls in place to ensure that all the provisions of the Code relevant to any particular circumstance are taken into account by their professionals.

Calculating the 1% creeper

Under Rule 14.1(b), any person who, together with persons acting in concert with him, holds not less than 30% but not more than 50% of the voting rights of a company and such person, or any person acting in concert with him, acquires in any period of 6 months additional shares carrying more than 1% of the voting rights (the "1% creeper") is obliged to make a general offer for the company.

Note 11 on Rule 14.1 provides guidance on how the 1% creeper is calculated. If a shareholder or group of shareholders acting in concert holding 30% or more sells shares, the 1% will apply to the reduced holding. As a result, an offer obligation will arise if the reduced holding is 30% or more¹, and is increased by more than 1% in any 6 month period.

¹ If the reduced holdings is less than 30%, the shareholder or group of shareholders acting in concert will incur an obligation to make a general offer if any further purchases cause the holdings of the shareholder or group of shareholders acting in concert to increase to 30% or more.

The guidance provided in Note 11 on Rule 14 refers to the situation where the *reduced holding established a new lowest percentage holding in the 6 months prior to the sale*. As set out in the Note, sales of shares may not be netted off against purchases in this context.

A shareholder or a group of shareholders acting in concert is, however, free to buy and sell further shares voting rights within a range of 1% above the greater of 30% or its lowest percentage holding of voting rights in the previous 6 months without incurring an obligation to make a general offer. In this context, the sale of shares may be netted off against purchases.

A simple formula to calculate how much a shareholder (Shareholder A) can purchase while staying within the 1% creeper is as follows:

$$(X\% + 1\%) - Y\%$$

Where:

X% ≥ 30% and is the lowest percentage holding of voting rights of Shareholder A and his concert parties in the 6 months prior to the proposed purchase.

Y% is the percentage holding of voting rights of Shareholder A and his concert parties hold just prior to the proposed purchase.

Where shareholders are uncertain, the Secretariat should be consulted.

Half-yearly statistics on M&A activity

In the six months ended 31 December 2019, there were 17 offers and 3 whitewashes lodged with the SIC.

Useful links

- The Singapore Code on Take-overs and Mergers
https://www.mas.gov.sg/-/media/MAS/resource/sic/The_Singapore_Code_on_Take_Overs_and_Merger_24-January-2019.pdf?la=en&hash=2C4793999C65A258D65CB413D0301B1F290D7405
- Securities Industry Council's Website
<https://www.mas.gov.sg/securities-industry-council>

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You may send in your feedback and comments via email.

The information in the bulletin is intended as informal guidance and not meant to substitute consultations with the SIC Secretariat on how the Code applies to a particular case.
